



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 6, 2004

Mr. Dick H. Gregg, Jr.  
City Attorney for the City of Nassau Bay  
Gregg & Greg, P.C.  
16055 Space Center Boulevard, Suite 150  
Houston, Texas 77062

OR2004-0919

Dear Mr. Gregg:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 195692.

The City of Nassau Bay (the "city") received a request for court dockets for an eight-month period. You have provided this office with copies of the requested dockets that are held by the city's law enforcement agency. You claim that these records are excepted from disclosure under section 552.108 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Section 552.108 excepts from required public disclosure certain law enforcement and prosecutorial information, including (1) information held by a law enforcement agency or prosecutor that deals with the detection, investigation or prosecution of crime and (2) internal

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<sup>1</sup>You have not submitted court dockets that are maintained by the municipal court. We note that access to information collected, assembled, or maintained by or for the judiciary is governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules. Gov't Code § 552.0035(a); *see also Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992) (documents filed with a court are general considered to be public), Attorney General Opinion DM-166 at 3 (1992) (public has general right to inspect and copy judicial records, subject to the court's power to control access to its records); Tex. Sup. Ct. R. 12. Because the act does not control access to records of the judiciary, this office cannot direct either the release or withholding of such records. *See* Open Records Decision No. 25 at 3 (1974); *see also* Gov't Code § 552.002(a), .003(1)(B), *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ), Attorney General Opinion DM-166 at 1 (1992).

records or notations of a law enforcement agency or prosecutor that are maintained for internal use in matters relating to law enforcement or prosecution. Gov't Code § 552.108(a), (b). If a governmental body wishes to withhold this type of information, it can do so by demonstrating that release of the information or internal record would interfere with the detection, investigation, or prosecution of crime or that the information or internal record relates to an investigation that did not result in conviction or deferred adjudication. *Id.* § 552.108(a)(1)-(2), (b)(1)-(2).

Based on our review of the information provided, we are able to identify three distinct types of entries in the submitted docket. The first type consists of those cases in which there is an indication that a defendant failed to appear on the required court date. You state that additional charges have been brought against such defendants. Consequently, we understand you to assert that these entries relate to investigations that were pending on November 19, 2003, the date of the present information request, and are therefore subject to section 552.108(a)(1) and (b)(1). A governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). Whether disclosure of particular records will interfere with law enforcement or prosecution must be decided on a case-by-case basis. *See* Attorney General Opinion MW-381 (1981). Based on our review of your arguments and the submitted information, we find that you have demonstrated that the disclosure of the entries relating to pending cases would interfere with the prosecution of the associated cases. *See* Gov't Code § 552.108(a)(1), (b)(1).

The second type of docket entry involves cases in which the offense was dismissed, a verdict of not guilty was returned, or the defendant opted to take a driver safety course.<sup>2</sup> We understand you to assert that these entries relate to investigations that did not result in conviction or deferred adjudication, and are therefore subject to section 552.108(a)(2) and (b)(2) of the Government Code. We agree that section 552.108(a)(2) and (b)(2) are applicable.

We note, however, that section 552.108(a) and (b) are inapplicable to basic information about a crime. *See* Gov't Code § 552.108(c); *see also Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). We believe such basic information refers to the information held to be public in *Houston Chronicle*. We have marked the types of information that may be withheld under section 552.108(a) or (b) with respect to the first and second types of docket entries.

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<sup>2</sup>You state that docket entries involving a defendant's failure to appear are excepted from disclosure under section 552.108(a)(1) and section 552.108(a)(2) of the Government Code. Please note that the protections offered by each subsection are, generally speaking, mutually exclusive. In this instance, you state that a "failure to appear" notation indicates that additional charges have been brought against the defendant. We therefore understand you to argue that these docket entries pertain to criminal prosecutions that are still pending, an argument that is properly asserted under section 552.108(a)(1) of the Government Code.

The third type of docket entry involves those cases which resulted in convictions. Because the associated investigations are no longer pending, section 552.108(a)(1) and (b)(1) do not apply; because they resulted in convictions, section 552.108(a)(2) and (b)(2) do not apply. The information and internal notations or records relating to these docket entries must be released to the requestor.

In summary, basic information relating to the first and second types of docket entries must be released; the remaining information in these entries may be withheld under section 552.108. All information relating to the third type of docket entry must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within ten calendar days of this ruling, the governmental body will do one of the following three things: (1) release the public records; (2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or (3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within ten calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Steven W. Bartels". The signature is written in a cursive, flowing style.

Steven W. Bartels  
Assistant Attorney General  
Open Records Division

SWB/sdk

Ref: ID# 195692

Enc. Submitted documents

c: Ms. Marie Holmes  
18630 Martinique  
Nassau Bay, Texas 77058  
(w/o enclosures)